

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

*Original with Affidavit
of mailing*

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Pg 5*

74-2518

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 74-2518

UNITED STATES OF AMERICA,

Appellee,

—against—

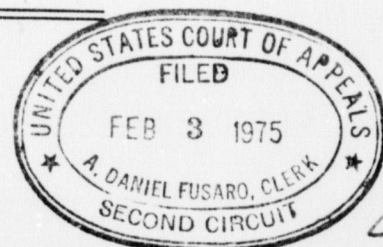
GARY WARREN, a/k/a MICHAEL CHUNN,

Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

GOVERNMENT'S APPENDIX

DAVID G. TRAGER,
*United States Attorney,
Eastern District of New York.*



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Transcript of Proceedings for June 25, 1974 (73 Cr.
961) before the Honorable Jack B. Weinstein **A-1**

TRANSCRIPT OF PROCEEDINGS FOR JUNE 25, 1974 (73 CR 961)
BEFORE THE HONORABLE JACK B. WEINSTEIN

A 1

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-against-

GARY WARREN
a/k/a MICHAEL CHUNN

:

:

:

:

73 CR 961

United States Courthouse
Brooklyn, New York

June 25, 1974
10:00 o'clock a.m.

Before:

HONORABLE JACK B. WEINSTEIN, U.S.D.J.

I hereby certify that the foregoing is a
true and accurate transcript from my sten-
ographic notes in this proceeding.
FRANCESCA A. ...
Acting Official Court Reporter

Official Court Reporter
U.S. District Court

Appearances:

A ²2

DAVID G. TRAGER, ESQ.,
United States Attorney
for the Eastern District of New York

BY: GUY HEINEMANN, ESQ.,
Assistant United States Attorney

LEGAL AID SOCIETY
Attorney for Defendant

BY: EDWARD KELLY, ESQ.

1 THE COURT: Yes Mr. Heinemann.

2 MR. HEINEMANN: Your Honor I had discussions
3 with two different United States Officers all
4 yesterday afternoon because of a disagreement as
5 to the handling of this defendant. I was in touch
6 with the office of the Chief of Narcotics and
7 Dangerous Drug Section of the Criminal Division
8 in Washington. There is still a disagreement and
9 consideration how this district as well as the
10 other districts should handle the case pending
11 against Michael Chun a/k/a Gary Warren. In fact,
12 at this point the Assistant Attorney General for
13 the Criminal Division has become involved in the
14 negotiations and discussion.

15 I know the Government should be able to
16 expeditiously speak with one voice but it has
17 taken at least to this time to even reach the
18 point where we are on the verge, I hope, of a
19 policy.

20 I was going to ask the position of the
21 defendant.

22 MR. KELLY: Your Honor, I have been a party
23 to some of the things Mr. Heinemann has referred
24 to and the defendant's position at this point, your
25 Honor, is that there will not be a trial in this

1 case. I think the defendant will plead guilty.
2 However, priot to entering a guilty plea I think
3 the defendant would like to have a hearing to
4 determine whether or not the manner in which he
5 was brought into this country comes under the
6 Toscannino Case.

7 As I understand, the defendant was not
8 extradicted from Brazil, he was expelled from the
9 country and placed on board a plane and handcuffed
10 and brought here by Brazilian Agents.

11 Prior to any guilty plea on the defendant's
12 part I would like to have a hearing on whether or
13 not he was denied due process as an American
14 Citizen that when brought in in the manner he was.
15 If he would lose the motion the defendant would
16 plead guilty of course, and I would like to preserve
17 that issue on appeal without going through the
18 start of a trial in order to preserve that issue.

19 THE COURT: What I think you could do is
20 try the case on the record and stipulate.

21 We will release the jury, we will not need
22 it in this case and we will hold a hearing immediately.
23 When will the Government be ready for the hearing.

24 MR. HEINEMANN: Well your Honor, there would
25 be a number of cables to obtain. In fact I would

1 have to be in contact with the American Agents who
2 are in contact with the Brazilian Government. I
3 do not know.

4 As I understand the Brazilian Government
5 made a determination that this defendant was an
6 undesirable alien to have in their country and based
7 on their own immigration laws and the privileges
8 they extend to foreigners decided to expel him.
9 He was expelled, I believe, under the custody of
10 Brazilian Agents or Police Officers to Kennedy
11 Airport.

12 I think that there was definitely communication
13 between the United States Government Drug Enforcement
14 Administration and the Brazilian Government that
15 may have led to their evaluation he was an undesirable.
16 As to the details I do not know.

17 THE COURT: When would the defendant feel
18 he would be ready? The burden is on him I believe.

19 MR. KELLY: Well I do not know your Honor.
20 I have not been faced with this particular problem
21 before. I thought that by the defendant taking the
22 witness stand and testifying as to the manner in
23 which he was brought into the country he would out
24 a prima facie case, and it would then fall upon the
25 Government to come forward. I think all the material

1 is in the hands of the Government. They know how
2 they brought him here, they know what communications
3 they had with the Brazilian Government.

4 THE COURT: We will have the hearing start
5 this morning and you may make out a prima facie case.

6 MR. KELLY: Fine Judge.

7 THE COURT: We will take a recess while I
8 hear other matters.

9 (A recess was taken.)

10 MR. HEINEMANN: Your Honor before we proceed
11 I would like to bring to your Honor's attention and
12 I am sure your Honor is aware, of the issues on
13 consent of Government can be preserved for Appellate
14 review and Court of Appeals if that was the case,
15 United States v. Mitchell Rothberg decided a Court
16 of Appeals last JUNE, June 8, 1973. I do not have
17 the recorded citation there with other cases
18 referred to in the footnote 1 of the opinion, United
19 States v. Mann and United States v. Doyle.

20 MR. KELLY: That is what I had in mind when
21 I indicated there would be a guilty plea preserving --

22 THE COURT: So we will not have to try it
23 on stipulated fact.

24 MR. KELLY: That is correct.

25 THE COURT: I have some serious reservations

1 as to the Court of Appeals entertaining an appeal
2 after a plea of guilty on the issues but if counsel
3 wishes to proceed in that way you are entitled to
4 do so. I expect defense counsel to point out to the
5 client fully the procedural problems involved so
6 he will understand he runs some risk when he pleads
7 guilty. I do not believe this procedure as used
8 by the Circuit is authorized.

9 You may proceed.

10 MR. HEINEMANN: Your Honor has requested
11 defense to make a prima facie case on the issues.

12 M I C H A E L C H U N, having been first duly sworn took
13 the witness stand and testified as follows:

14 DIRECT EXAMINATION

15 BY MR. KELLY:

16 Q What is your name?

17 A Michael James Chun.

18 Q Where were you born Mr. Chun?

19 A In Pasadena, California.

20 Q As far as you know are you a citizen of the
21 United States?

22 A Yes I am.

23 Q And have you ever renounced your citizenship
24 at any time?

25 A No I have not.

1 Q Have you ever become a naturalized citizen
2 of another country?

3 A No.

4 Q Mr. Chun, directing your attention to
5 November of 1973 could you tell us where you resided at
6 that particular time?

7 A In Bogota, Colombia.

8 Q Did there come a time when you left Bogota,
9 Colombia?

10 A Shortly after November, 1973.

11 Q Would you tell us the facts and circumstances
12 under which you left Bogota, Colombia?

13 A I was living in Bogota, Colombia and
14 American Agents along with Colombian Agents came to my
15 house.

16 Q How do you know that American Agents were
17 involved Mr. Chun?

18 A Because they drive a diplomatic car and their
19 diplomatic car was out in front of my house at that
20 particular time it was told to my wife.

21 Q Did you see the car yourself?

22 A No I did not see it.

23 Q What happened after this happened?

24 A I left Colombia for Ecuador.

25 Q Did you go alone to Ecuador?

A Yes, I went alone to Ecuador and I called my

1 wife and she came to Ecuador.

2 Q How long did you stay in Ecuador?

3 A Approximately two weeks.

4 Q Were you charged with any violations of law
5 while you were in Ecuador?

6 A No.

7 Q After two weeks did you t' Ecuador?

8 A Yes I did.

9 Q Where did you go?

10 A I went from Ecuador to Peru in transit and
11 then on my way to Rio de Janeiro.

12 Q There arrived a time when you arrived in
13 Rio de Janeiro?

14 A Yes.

15 Q How long did you reside in Rio de Janeiro?

16 A I arrived in Rio de Janeiro the first of
17 January until June 12, 1974.

18 Q What did you do while you were in Rio de
19 Janeiro?

20 A My wife and I had a clothing factory.

21 Q During that period of time that you were in
22 Brazil in Rio de Janeiro, did you violate any Brazilian
23 law?

24 A No.

25 Q Did there come a time when you were arrested

1
2 by Brazilian authorities?

3 A Yes.

4 Q Would you tell us the facts and circumstances
5 under which that occurred?

6 A I am not exactly sure if it was June 12the
7 the day I was arrested, I think it was. I was arrested
8 10:00 o'clock in the morning and they came into my apartment
9 and told me that they had been notified by the American
10 authorities that I had murdered an American agent and also
11 had been trafficking.

12 Q Trafficking in what?

13 A In drugs.

14 Q Did these agents show you any authorization
15 of any papers of any sort?

16 A No, they had no authorization, just strictly
17 telephone conversations at the time.

18 Q Were you then taken someplace?

19 A They took me to the Central Office in Rio de
20 Janeiro.

21 Q What happened when you went to the Central
22 Office?

23 A They interrogated me.

24 Q How long did they interrogate you?

25 A Five or six hours.

Q Did they physically mistreat you in any way?

A No.

Q Were there any threats or promises made to you during the interrogation?

A There was only one threat, they threatened me they would keep my wife incarcerated if I didn't cooperate with them and tell them who I was, if I was the person they were looking for, because they were not sure I was the person they were looking for.

Q Did you make any statements to them at any time?

A No.

Q Did they show you any photographs of yourself or fingerprint you at that time?

A No, they had no fingerprints and they did not fingerprint me at that time.

Q During this time did they provide you with counsel?

A No, they would not let me make a telephone call to obtain counsel.

Q Would you speak up Mr. Chun?

A They would not let me make a telephone call to obtain counsel.

Q Did you have any contact with the American

1
2 Consulate at this time?

3 A No.

4 Q Did anybody come to visit you from the American
5 Consulate?

6 A On one occasion, a Vice-Counsel, a woman, came
7 into the detention jail where I was being kept and she did
8 not talk to me, she looked at me and walked away.

9 Q You were in custody during this period of time?

10 A Yes I was.

11 Q About how long were you in custody in Rio de
12 Janeiro?

13 A Four days.

14 Q During that time did you participate in any
15 deportation hearings on the Brazilian law?

16 A No. They told me they were going to send me
17 to Brazilia for deportation hearings and they found out my
18 wife was eight months and four to five days pregnant so
19 they didn't have a deportation hearing at that time.

20 Q Were there any deportation hearings of any
21 type you participated in?

22 A No.

23 Q What happened at the end of the four days
24 during which you were in custody?

25 A They took me to the airport in Rio de Janeiro.

Q Who took you to the airport?

A Two agents.

Q Brazilian agents?

A Yes.

Q What transpired at the airport?

A They signed all my papers to leave the
country.

Q Did you sign any papers?

A No.

(Continued on next page)

1
2 Q Did you consent at any time to leave the
3 country?

4 A No.

5 Q What happened when you were placed on board
6 the airplane?

7 A They handcuffed me and put me on an airplane.

8 Q What was the airplane you were placed on?

9 A It was a Pan American airline 707 and I think
10 it was Flight 201.

11 Q What transpired when you were aboard the plane?

12 A I asked my handcuffs be removed at one period
13 of the flight because we had encountered a lot of turbulence
14 and they told me no, they could not remove the handcuffs.
15 So I asked the co-pilot of the plane and he said no, that
16 the captain says the prisoners on his plane are always
17 handcuffed.

18 Q Did there come a time when you arrived in the
19 United States?

20 A Yes.

21 Q Where did you arrive in the United States?

22 A I arrived at Kennedy Airport the following
23 morning.

24 Q What happened at Kennedy Airport?

25 A I was met by this gentleman over there.

MR. HEINEMANN: Defendant indicating Special Agent Nicholas Alieva.

Q Was your custody relinquished by the Brazilian agent to this agent of the United States at that time?

A Yes, I was in his custody then. He had to sign the papers, he signed some papers or something.

MR. KELLY: I have no further questions.

CROSS-EXAMINATION

BY MR. HEINEMANN:

Q When you saw what you described as American Agents in Bogota what were they doing?

A they were supervising the Colombian Agents who came up to my house.

MR. HEINEMANN: I object to the characterization "supervise".

Q What did you see them doing?

A Well, I didn't see their car but I know they were there because they were talking on a Walkie-Talkie to the Colombian Agents.

Q How could you tell they were Americans other than the car?

A Well, Americans in Colombia -- I can tell they were Americans.

Q Were they speaking Spanish?

1
2 A Yes. They were speaking Spanish in the
3 Walkie-Talkie.

4 Q Did they have American accents?

5 A They looked American, they looked blond and
6 over six foot two and I have seen these particular agents
7 on another occasion and I knew they were American agents.
8 They were working for the embassy and I knew them by their
9 names.

10 Q When did you meet them?

11 A I never met them personally or through
12 personal introduction but I had seen them in a restaurant
13 close to the American Embassy.

14 Q How did you learn their names?

15 A I learned their names from one Steven Burdock.

16 Q At all times that you saw these agents whom
17 you described as Americans were they acting together with
18 and working with other agents whom you knew to be Colombian?

19 A Yes.

20 Q And at no time were they acting alone or
21 did they take any police action on their own, is that right?

22 A No, they were not acting alone, they wanted
23 the cColombian Agents to arrest me in Bogota and I left
24 my house through the back door.

25 Q What kind of immigration documents did you

1 have during the period you were in the country of Colombia?

2 A Immigration documents are you referring to,
3 passport?
4

5 Q Any kind of documents, any kind of documentation
6 given to you by the country of Colombia?

7 A I have a visa.

8 Q What kind of visa?

9 A A tourist visa stamped into my passport.

10 Q Under whose name was the visa?

11 A Under Walter Smith.

12 Q Is that your true name?

13 A No.

14 Q And how long was that visa valid?

15 A The visa was valid for 90 days.

16 Q How long were you in Colombia at the time
17 you first got there?

18 A Thirty days. When I left Colombia I had been
19 there approximately 30 days.

20 Q This is approximately when Mr. Chun?

21 A The time I left Colombia?

22 Q Yes, the last time you were in Colombia before
23 you went to Ecuador and then Peru and Brazil?

24 A This was around the middle or the 14th of
25 November, I am not exactly sure of the date.

1
2 Q Of 1973?

3 A 1973.

4 Q And where did you go from there?

5 A I went to Ecuador.

6 Q And when you went to Ecuador what passport
7 were you using?

8 A When I was in Ecuador I was using another
9 passport.

10 Q Under which name?

11 A Luis Bruno Alcorta.

12 Q What passport did you have and use while you
13 were in Bogota?

14 A The Walter Smith passport.

15 Q In other words you had both an American Passport
16 under the name of Walter Smith?

17 A Yes.

18 Q And these are obtained from the Colombian
19 Government under the false name of Walter Smith?

20 A Well, I know I did not have a visa. When you
21 enter the country they stamp the passport and that is
22 automatically a visa. It is not apart from your passport,
23 it is stamped into your passport.

24 Q When you went to Ecuador from Bogota in
25 approximately November, 1973 you used another false

American passport, is that right?

A Yes I did because I was told that if I was caught in Colombia I would be shot because the American Agents had told the Colombian Agents that I was a dangerous person and I killed an American Agent in the United States. And so I had a choice of either being caught and shot or get out of the country under a different name.

Q Incidentally, were you carrying any weapons, did you have any weapons on you in Bogota?

A No, when they came to my house I had no weapons.

Q Did you own any weapons at the time or during the time you were in the country of Colombia?

A Personally no.

Q Did you have access to any?

A Yes.

Q How was that?

A Because I was living in another person's house and they had weapons.

Q What kind of weapons?

A He had a shotgun and pistol and I think a high powered rifle.

Q Going back for a minute from the time you were in Colombia to the last episode Mr. Chun, did there come a

1
2 time when agents came to your house, both Colombian and
3 American, to speak to you?

4 A Yes.

5 Q At that point you understood they were there
6 to arrest you, is that right?

7 A Of course.

8 Q And did you have occasion to engage in any
9 activity that resulted in any physical harm being visited
10 upon any of these agents whether they were American or
11 Colombian?

12 A I do not feel I can answer that question as
13 the result of physical harm because I am not a doctor. I
14 was under the understanding when I closed the door an agent
15 stuck his hand in the door.

16 Q It is not a fact and it is not unfair to say
17 you slammed the door on the arm of one of the agents?

18 A No I would not say that, I did not slam the
19 door on his arm. He set his hands, I think one finger into
20 door.

21 Q And you ended up closing it while the finger
22 was still there?

23 A The reason I did this --

24 Q I just want to know if it happened?

25 A Yes, it happened. I did that because the man

1
2 would not show me identification that he was an agent. He
3 just put out his handcuffs.

4 Q You do not know whether the body and person
5 that belonged to the finger was American or Colombian?

6 A I know he was Colombian because I speak more
7 or less perfect Spanish and I could tell by his accent he
8 was Colombian.

9 Q Let us go to Ecuador. You had a second false
10 passport that you used, is that right? You have given us
11 that name. Is that an American Passport?

12 A Yes it is.

13 Q Did you obtain any other visas of any kind
14 from the country of Ecuador?

15 A No I did not.

16 Q Was there a visa stamped in the passport
17 by the Ecuadorian Government similarly to that which your
18 other passport stamp had in Colombia?

19 A Yes, in Ecuador they stamped a visa in my
20 passport. It is not a visa, it is a temporary permit into
21 the country for a period of 60 to 90 days.

22 Q How long did you remain in Ecuador on this
23 occasion?

24 A I remained in Ecuador approximately two weeks,
25 possibly three weeks because when I was getting away from

Chun-cross

22

1
2 the American Agents and Colombian Agents in Bogota I hurt
3 myself so I was resting.

4 Q What was the occasion for your leaving Ecuador?

5 A Because I did not want to stay in Ecuador,
6 I wanted to go to Brazil.

7 Q When approximately did you go to Brazil via
8 Peru after you had been in Ecuador?

9 A I had been in Peru for only one night. I was
10 in transit and I stayed at the Hotel Bolivar for a night and
11 left in the morning for Rio de Janeiro.

12 Q Approximately when was this if you recall?

13 A I would say -- well, the day I arrived in
14 Rio de Janeiro was the 1st of July -- January pardon me,
15 not July.

16 Q 1974?

17 A Of 1974 so I was in Perus the last day of
18 December, 1973.

19 Q You first landed in Rio de Janeiro, is that
20 right?

21 A No, when I entered Brazil the first time that
22 we landed was San Paulo and from there to Rio de Janeiro.

23 Q The first time you got off for any period
24 of time was in Rio de Janeiro, is that right?

25 A Yes I got off the plane in Rio de Janeiro

1
2 Q And is that where you remained the balance
3 until you were arrested?

4 A Yes it is.

5 Q What documents if any did you have that
6 authorized you to stay or visit the country of Brazil?

7 A I had a temporary -- well, it was temporary --
8 a work permit or theatrical publicity thing, something like
9 that and I also had my passport where they stamped it.

10 Q When you say passport, which passport are you
11 referring to now in Brazil?

12 A Luis Alcorta passport.

13 Q Was that an American Passport?

14 A Yes it was.

15 Q Where did you obtain the work permit that you
16 say you had?

17 A It is not really a work permit, you pay a tax,
18 you pay \$20 -- it is in Cruzeiros but it is more or less
19 \$20. This means you can work in theatrical or publicity,
20 movies, things like that.

21 (Continued on next page)
22
23
24
25

Q Where did you get that document?

A At the Minister of Tax in Rio de Janeiro.

Q That was after you landed?

A Yes, a couple of weeks after I landed.

Q During the entire time that you were in Brazil you were using a false documentation, that is to say you were using a name you just gave us. Would you repeat that?

A Luis Bruno Alcorta.

Q You were using this false documentation during the time you were in Brazil?

A Well I was using not my real name.

Q How did you get that American Passport with Luis Alcorta on it?

A I bought it.

Q You knew it to be false at that time?

A Well I knew it was not my passport. I was in need of a passport because --

Q You knew your own name was not Luis Alcorta?

A Of course.

Q Was there any other documentation that you had to obtain during the entire time that you were in Brazil from the first of January until June, 1974?

A Yes, I had to go down and get an extension on

1
2 my period that I could be in Brazil.

3 Q You went to do that at the Ministry of Taxes?

4 A No, Immigration and they stamped another
5 90 days in your passport.

6 Q Had they stamped the 90 days visa or permit
7 the first time you entered?

8 A Yes they did.

9 Q And this was the immigration authorities
10 of the country of Brazil, is that right?

11 A Yes.

12 Q And when you saw them on both occasions that
13 is when you first entered and when you needed 90 days
14 extension you were using this Luis Alcorta passport which
15 you have not in your own name?

16 A Yes I was.

17 Q When for the first time were you approached
18 or had contact made with you by any authorities of the
19 Brazilian Government subsequent to obtaining the extension,
20 the 90 day extension on the visa.

21 A Never.

22 Q There came a time when you were arrested?

23 A Yes, but that is after I obtained the extension
24 of the 90 days on the visa.

25 Q After that happened were you only contacted

1
2 by them once and that is when you were arrested?

3 A Yes, they had been watching me for a week,
4 one week.

5 Q When you say they arrested you, you may not
6 recall the names of the agents but can you describe exactly
7 how many agents there were and where they approached you and
8 what if anything they said to you?

9 A Well, they came into my apartment. My maid
10 opened the door and I was in bed sleeping and they came into
11 my bedroom and handcuffed me.

12 Q How many of them were there?

13 A Five.

14 Q And they announced to you what their authority
15 was for whom they were there?

16 A Yes, they told me they came there because
17 American authorities had notified them that I was living at
18 this particular address and I was wanted in the United States
19 for murdering an American Agent and for trafficking.

20 Q Did they indicate to you by anything they said
21 or did what particular branch of the Brazilian Police they
22 were employed by?

23 A They were Interpol, they were Federal Police.

24 Q And did they take your American Passport you
25 had under the name of Luis Alcorta?

1
2 A Yes.

3 Q And subsequently did they learn either from
4 you or accuse you of the fact that was not your true name?

5 A No they did not realize that that was not
6 my true name or exactly what the story was because they
7 had a picture on it and to them apparently it did not look
8 like a false passport and that was not, I think, the issue.
9 The issue was to them whether I was or was not and I told
10 them I was not the person they were looking for.

11 Q Did they use the name Gary Warren or Michael
12 Chun in describing you or questioning you?

13 A Yes, they had all those names.

14 Q Did they indicate in any way they believe it
15 or had information that the name on your passport you
16 exhibited to them was not in fact your true name?

17 A No, they did not say that because they kept
18 me in the kitchen for a while because they were not sure.

19 Q Where were you brought to in Rio de Janeiro
20 from your apartment when you were arrested, do you know the
21 address or location?

22 A I was brought to they call it the Ucar. It
23 is an area in Rio de Janeiro and it is Headquarters for the
24 Federal Police.

25 Q And you were brought there by individuals who

1
2 came to your apartment?

3 A Yes.

4 Q When you got to the headquarters of the Federal
5 Police -- incidentally do you remember a street name of that
6 location?

7 A No.

8 Q When you were brought there you said you
9 were questioned, is that right?

10 A Yes I was.

11 Q Who questioned you?

12 A One of the gentlemen that brought me from
13 Brazil, both of the two gentlemen who brought me here.

14 Q Were any of those two individuals the
15 individuals who went to your apartment?

16 A Yes they were.

17 Q Were both of them actually in your apartment
18 who arrested you?

19 A Yes.

20 Q Did you happen to know their names?

21 A I know the first name of one, it is Milton,
22 it is on the paper they gave to the American Agents here in
23 New York when they brought me here.

24 Q What was the nature of the interrogations
25 that took place, the questioning that took place after you

1
2 were brought to the headquarters of the police?

3 A The nature of it, if I knew whether or not I
4 was the person they wanted.

5 Q How did they indicate to you who it was they
6 wanted?

7 A They told me they were looking for Gary Warren
8 or Michael Chun and these other names, that he had been
9 involved in trafficking and with a United States Agent.

10 Q In all times during these interrogations
11 did you deny being Gary Warren or Michael Chun?

12 A No, not at all times. They threatened me,
13 they told me if I did not cooperate with them they would
14 keep my wife in custody and she had been 8 months over
15 40 days pregnant at that particular time.

16 Q Incidentally was your wife in the apartment
17 when you were arrested?

18 A Yes she was.

19 Q Was she taken into custody?

20 A Yes.

21 Q What charge did they say they would hold your
22 wife on?

23 A I do not know, they never said the charge.
24 They said they would just hold her.

25 Q Did you admit to them your name was Gary Warren

1
2 or Michael Chun?

3 A No.

4 Q Throughout the entire period you were
5 interrogated which I understand you say was five or six
6 hours did you ever admit to them your true name was Michael
7 Chun and you also used the name Gary Warren?

8 A No I did not tell them that but I told them
9 I had known this person.

10 Q Exactly what was it you told them?

11 A I told them I was a friend of the person in
12 question.

13 Q Did you offer to help find him?

14 A No.

15 Q What else were you questioned about besides
16 your own identity? Were you questioned about narcotics
17 traffic?

18 A No, they did not question me about that be-
19 cause they had been watching my apartment for one week and
20 they knew I was not associated with that element of people
21 in Brazil.

22 Q Excuse me, can you explain that?

23 A They had me watched in my apartment for one
24 week and they knew I was not associated with that element
25 of people in Brazil, people who work in narcotics. I had

1
2 been working ten or twelve hours a day and they watched
3 me and they told me they watched me for one week and they
4 said it was decided it was about time they picked me up.

5 Q How many days were you held in custody by
6 the police, the Federal Police of Brazil?

7 A For four days.

8 Q And where where were you lodged?

9 A In Central Rio.

10 Q Is that place separate from where you were
11 first brought when you were arrested?

12 A This is federal detention solely for people
13 waiting for processing in court.

14 Q When you were first brought to the detention
15 headquarters were you ever brought back to the police
16 headquarters?

17 A Yes I was.

18 Q When was that?

19 A That was two days before I left the country
20 to be fingerprinted and photographed.

21 Q And did they fingerprint and photograph you?

22 A Two days after I had been detained.

23 Q Did they question you further at that time
24 when they brought you back two days later to the Federal
25 Prison?

1
2 A No.

3 Q Was that the only time you were brought from
4 the Federal Detention House before you were flown to the
5 United States?

6 A Yes. They did tell me the reason they weren't
7 sending me to Brazilia for legal extradition is if they
8 sent me to Brazilia they would have to leave my wife in
9 the country if she had a baby in the country through the
10 laws of the country which is they could not extradite me
11 at that time.

12 Q Of all the times you were in the custody of
13 the Brazilian Federal Police the only time you were inter-
14 rogated is when you were first arrested, Is that right?

15 A Yes.

16 Q And during that time that you were questioned
17 or interrogated were you other than you have described
18 concerning the custody of your wife, were you threatened
19 in any other way?

20 A No.

21 Q Were you physically harmed in any way by
22 any member of the Brazilian Police?

23 A Yes, I was physically harmed by the handcuffs
24 on the airplane which were very tight for nine hours.

25 Q Before the time that you got on the airplane

1
2 were you physically harmed in any way in Brazil by the
3 Brazilian Authorities?

4 A Physically no.

5 Q Other than their statement to you that they
6 intended to hold your wife in custody if you did not
7 cooperate with them, did they threaten you in any other
8 way?

9 A No.

10 Q Your testimony is you were never shown any
11 documentation that dealt with the Brazilian Government's
12 expulsion from you of their country to the United States?

13 A The only documentation they had was a piece
14 of paper with a lot of names on it and my address in Rio de
15 Janeiro. They never had any legal documentation.

16 Q That they showed you?

17 A No, they did not have.

18 (Continued on next page)
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2 Q I am only asking you what you were able to
3 see based on what they showed you. Did you see any
4 documents shown to you by any members of the Brazilian
5 Authorities that they had the legal right to expel you
6 from their own country?

7 A No. They did tell me they had to take me
8 to Brazilia for extradition.

9 MR. HEINEMANN: I have no further questions
10 at this time.

11 THE COURT: Is there any redirect?

12 MR. KELLY: NO Judge.

13 THE COURT: Does that constitute the defendant's
14 case?

15 MR. KELLY: Yes Judge.

16 THE COURT: I am highly doubtful whether
17 you have made out a prima facie case assuming
18 everything your client said is true.

19 MR. KELLY: Well it is true your Honor, this
20 case is distinguishable from the Toscanino case.

21 THE COURT: The facts as I find them now are
22 that the defendant was in Colombia illegally. He
23 was using a false passport. That Colombian Agents
24 were seeking to question him. That he used violence
25 on one Colombian Agent and he escaped from Colombia,

1 undoubtedly in violation of the criminal laws of
2 Colombia.

3 THE DEFENDANT: Can I say something your Honor.

4 MR. KELLY: No.

5 THE COURT: It was perfectly justified I
6 think, assuming there were United States Agents
7 involved which I am not sure about, but assuming
8 there were, a false United States Passport was being
9 used and it was appropriate for United States Agents
10 to be cooperating with Colombian Agents in such an
11 investigation of the violation of both Colombian
12 and American criminal law. Certainly no improper
13 conduct on the part of the American or Colombian
14 Agents is shown.

15 The defendant then went to Ecuador. He was in
16 Ecuador in violation, undoubtedly, of the Ecuadorian
17 criminal law because he was using a false passport
18 and gained entry into that country using a false
19 passport.

20 He entered Brazil using a false passport in
21 violation of the laws of Brazil. He also obtained
22 a false work permit, undoubtedly in violation of
23 the criminal laws of Brazil. It was perfectly
24 appropriate for him to be investigated by Brazilian
25 Authorities and to be taken in for questioning. Having

1 entered the country illegally and being there
2 illegally it was appropriate for him to be expelled.
3 He had no business being in Brazil under a false
4 passport and it would have been appropriate, I think
5 under the laws of most civilized nations to handle
6 the matter in just that way.

7 The defendant had no right to be in the country
8 and had falsely entered, that is he had entered using
9 false credentials. They had a right to put him on
10 the plane to send him out and since he was an
11 American Citizen the place to send him was back
12 to America. I think that would standard practice
13 throughout the world.

14 There is no indication at all that the
15 American Authorities participated in any of the
16 activities in Brazil and it was perfectly appropriate
17 for the Brazilian Authorities to contact American
18 Authorities by telephone, as your client has testified,
19 and the defendant has testified, to determine whether
20 there was a man like Alcorta or Mr. Smith or whether
21 he was in fact Mr. Warren or Michael Chunn. No
22 physical violence was used at any time.

23 Lack of a hearing was apparently a result not
24 of an attempt to deny the defendant any of his
25 Brazilian rights, whatever they might have been, but

1 rather an attempt to show some compassion towards
2 his pregnant wife.

3 I do not see in what way the American Authorities
4 can be said to be at all at fault or to have violated
5 this defendant's Constitutional Rights.

6 If you want a short recess to give me the
7 cases you are relying upon I will be happy to give
8 it to you. I see not point in continuing the hearing
9 further under these circumstances.

10 MR. KELLY: I do not have any cases other
11 than the Toscanino Case.

12 THE COURT: Let me have the slip sheet and I
13 will look at it again.

14 MR. KELLY: The point I am making, your Honor,
15 is that the very fact that the defendant left Colombia,
16 I think, if we take his testimony as true, was done
17 partly through the instigation of American authorities.

18 THE COURT: I see no basis at all for that.

19 MR. KELLY: I would say the same situation
20 arose in Brazil. It was through the pressure
21 exerted by American authorities that this defendant
22 who had lived placidly in Brazil for eight months
23 was taken into custody.

24 THE COURT: He was living under a fraudulent
25 passport and using fraudulent work papers.

1 MR. KELLY: Well, I understand that.

2 THE COURT: I do not understand. Anybody
3 in this country who used these techniques would be
4 thrown out of the country too.

5 MR. KELLY: That person, I believe, would
6 have proceedings before the Immigration Service
7 before that was done to protect his rights.

8 THE COURT: We do not have to force other
9 countries to give the same degree of due process
10 as we give in this country. Certainly the procedures
11 are not uncivilized as they have been described here.

12 MR. KELLY: It is true what your Honor says.
13 I am just indicating as part of what happened to
14 the defendant, taking that as part of a whole
15 context in which he was given no rights under
16 Brazilian law or United States law because the
17 United States if they --

18 THE COURT: What rights could the United
19 States give him in Brazil or Colombia or Ecuador?

20 MR. KELLY: They could make sure of his
21 rights as an American Citizen by returning him to
22 the United States according to the legal channels.
23 There is an extradition treaty with Brazil.

24 THE COURT: I do not understand how this
25 country can control Brazilian activities. We have

1 no right to interfere with the internal operations
2 in Brazil. I do not understand what you expected
3 the country to do.

4 MR. KELLY: I think under very suspicious
5 circumstances this defendant was expelled not to
6 some other country but was expelled by placing him
7 on board an American airline.

8 THE COURT: Where would they expel him to?
9 There is no other place to send him -- to Saudi Arabia?
10 No other country in the world would take him except
11 his place of citizenship. I do not understand what
12 you expected the Brazilian people to do when they
13 had a man illegally in their country, using a false
14 passport, who was concededly an American citizen
15 using a false American passport. What else were they
16 to do but put him on a plane back to this country.

17 MR. KELLY: Well he had come from other
18 countries in South America, he could have been sent
19 to other countries?

20 THE COURT: Where?

21 MR. KELLY: He could have been sent back to
22 the country he came from.

23 THE COURT: Ecuador would not take him, he
24 was using false Ecuadorian visa.

25 MR. KELLY: We do not know that just because

1 nobody asked anybody else what to do.

2 THE COURT: Why should they ask anybody?

3 The man is there illegally. He was in all these
4 countries he described illegally and none of them
5 would have taken him had they known the situation.

6 MR. KELLY: Well, it seems to me there ought
7 to be procedures for doing these things in a regular
8 way.

9 THE COURT: Where, in Brazil?

10 MR. KELLY: In any civilized country.

11 THE COURT: But I cannot control Brazilian
12 procedures. There is no showing whatsoever that
13 anything illegal was done by American officials,
14 which is of what is of concern here.

15 We will take a recess so that you may give
16 me the cases you rely upon and you better give
17 me a more coherent theory than I understand your
18 theory presently is. We will adjourn until 2:30.

19 MR. KELLY: I do not have any more cases to
20 offer your Honor. I was relying on Toscanino.

21 THE COURT: That is not very helpful.

22 MR. KELLY: Indicating perhaps because of
23 what was said in the Toscanino case, that it could
24 be extended to cover a situation which I admit is
25 distinguishable.

1 THE COURT: It is not very helpful to me.
2 You had better rely on specific language or specific
3 theory, not just throw a case at me. I do not have
4 the case before me. We will adjourn until 2:30.

5 (Whereupon the matter was adjourned to
6 2:30 o'clock p.m. of the same day.)
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AFTERNOON SESSION

2:30 P.M.

THE COURT: Any further material that either side wants to present?

MR. KELLY: No, I have nothing further.

MR. HEINEMANN: No, your Honor, except that I do not have today any translations of the Brazilian law with respect to the procedures for expulsion and deportation. My position would be that if the United States Government did not itself get involved in anything that could be nearly called a due process violation, that whether Brazil acted within its own rules would be irrelevant, but I would make an offer of proof that there is a procedure under Brazilian law for the expulsion and deportation of citizens that the Government deems undesirable.

THE COURT: I assume it's the case and the cases contruing Rule 44.1 I think it is, of the Rules of Civil Procedure, which apply in the situation through the Federal Criminal Rules. I will assume that they have such procedure in the absence of any material submitted by either counsel.

The findings of fact I made this morning are my findings of fact and I give the maximum possible weight to the testimony of the defendant.

1 Toscannino decided by the United States Court of
2 Appeals, May 15th, 1974, slip sheet pages 3514-3515,
3 placed down as the holding of that case that Ker does
4 not apply where a defendant has been brought into
5 the District Court's jurisdiction by forceable
6 abduction in violation of a treaty."

7 This defendant was not brought in by abduction.
8 No treaty was violated.

9 The line of cases that apply in this situation
10 is stated and referred to in footnote 9. The
11 slip sheet at Page 3517 "The Consitution, of course,
12 applies only to the conduct abroad of Agents acting
13 on behalf of the United States. It does not govern
14 the independent conduct of foreign officials in
15 their own country. Whether or not the United States
16 Officials are substantially involved or foreigners
17 are acting as their agents or employees, is a
18 question of fact to be resolved in each case."

19 I find, as a matter of fact, that United
20 States Officials were not substantially involved.

21 Other cases taking the same position are
22 Kilday v. United States, 481F 2d, 655 at 656; also,
23 United States v. Tierney, 448 F 2d, 37; United States
24 v. Shea, 436 F 2d, 740 at 741; United States v.
25 Nagelberg, 434 F 2d 585 at 587, Footnote 1; Stonehill

1 v. United States, 405 F 2d, 738 at 743; Brulay v.
2 United States, 383 F 2d, 345 at 348 and the offer
3 cited, Birdsell v. United States, 346 F 2d, 775 at
4 782, an opinion by Judge Friendly sitting by
5 designation in the 5th Circuit.

6 Procedures used by the Brazilian authorities
7 were in fact not shocking and did not violate any
8 concept of Roachin. This defendant's rights under
9 the Constitution of the United States were not
10 violated. This Court has jurisdiction to proceed
11 in this case.

12 This constitutes findings of fact in law
13 and the full hearing required under the Toscanino
14 decision. If, of course, Toscanino is reversed
15 by the Supreme Court, then A'fortiori, this Court
16 has jurisdiction in this case.

17 Any further findings of fact of law that the
18 defendant would like?

19 MR. KELLY: No, Judge.

20 THE COURT: The Government?

21 MR. HEINEMANN: No.

22 THE COURT: I'll hear your plea.

23 MR. KELLY: Judge, again, if we can reserve
24 at this point of appeal with the consent of the
25 Court and the United States Attorney, the defendant

1 is at the point where he will plead guilty to the
2 charge.

3 THE COURT: In my opinion, the practice of
4 the Second Circuit --

5 MR. HEINEMANN: United States v. Rothberg --

6 THE COURT: It is doubtful validity to the
7 extent that this Court has the power to preserve
8 Appellate Rights. The Court exercises them, but
9 I have serious doubts that anything I do and add or
10 subtract from the jurisdiction of the Court of
11 Appeals.

12 MR. KELLY: I have advised the defendant of
13 that, your Honor. He will still plead guilty.

14 THE COURT: What count?

15 MR. KELLY: A single count indictment, Judge.

16 THE COURT: What's the penalty?

17 MR. KELLY: 15 years or \$25,000 fine or both
18 and a three year special period of parole.

19 THE COURT: Three year minimum.

20 MR. KELLY: Minimum three year period of
21 parole, right.

22 THE COURT: What is your correct name?

23 THE DEFENDANT: Michael James Chunn.

24 THE COURT: How old are you, Mr. Chunn?

25 THE DEFENDANT: 28.

1 THE COURT: How much education have you had?

2 THE DEFENDANT: Two and a half years of
3 college.

4 THE COURT: Where?

5 THE DEFENDANT: Los Angeles.

6 THE COURT: What college?

7 THE DEFENDANT: Glendale Junior College and
8 Orange County College.

9 THE COURT: Have you ever been treated for
10 a mental or emotional problem?

11 THE DEFENDANT: No.

12 THE COURT: Do you take drugs?

13 THE DEFENDANT: I have at times.

14 THE COURT: When did you take drugs last?

15 THE DEFENDANT: Approximately a year ago.

16 THE COURT: What was the quantities and types?

17 THE DEFENDANT: Cocaine.

18 THE COURT: Is that the only drug you took?

19 THE DEFENDANT: It's the only drug I have
20 ever taken in any amount.

21 THE COURT: How much did you take?

22 THE DEFENDANT: Considerable amount -- you
23 mean at one period of time or over a period?

24 THE COURT: Over how long a period?

25 THE DEFENDANT: A year and a half.

1 THE COURT: What was the maximum you took
2 in any day?

3 THE DEFENDANT: A half ounce.

4 THE COURT: A half ounce? That's a very large
5 quantity.

6 THE DEFENDANT: Yes.

7 THE COURT: Where did you take that in,
8 Colombia?

9 THE DEFENDANT: Colombia.

10 THE COURT: Is there any indication that's
11 affected your brain?

12 THE DEFENDANT: No, I don't think so, to be
13 honest with you.

14 THE COURT: Are you taking any medication?

15 THE DEFENDANT: No.

16 THE COURT: You've discussed this case on
17 numerous occasions with your client. In your opinion,
18 is he capable of understanding the nature of these
19 proceedings?

20 MR. KELLY: Yes, your Honor, very responsive
21 at all times.

22 THE COURT: Have any tests been made to
23 induce you to plead guilty?

24 THE DEFENDANT: No, your Honor.

25 THE COURT: Any promises?

1 THE DEFENDANT: No, your Honor.

2 THE COURT: You know that I can sentence you
3 to 15 years plus \$25,000 fine plus a parole term
4 that can run for the rest of your life. You under-
5 stand that?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Are you doing this voluntarily?

8 THE DEFENDANT: Yes, your Honor.

9 MR. HEINEMANN: Your Honor, I should point out
10 with respect to this defendant, there are indictments
11 pending in two other Federal Districts. This
12 defendant has been told through his counsel and
13 by me, personally, that his plea here is not
14 dispositive of those indictments. He may very well
15 have to face trial in both of those other districts
16 where he faces charges for similar offenses.

17 THE COURT: You're entitled to an immediate
18 trial. I'm prepared to try this case immediately.
19 You have the right to trial by jury, the right
20 to counsel, if you can't afford it. Counsel will
21 be appointed by the Court.

22 You have many Constitutional and other
23 protections which you waive when you plead guilty.
24 You understand that.

25 THE DEFENDANT: Yes. I do.

1 THE COURT: It's the Court's opinion that you
2 can not appeal from a plea of guilty. You understand
3 that?

4 THE DEFENDANT: Yes.

5 THE COURT: Whereas you could appeal from a
6 conviction. You understand that?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: Have you explained all this and
9 other rights gives up?

10 MR. KELLY: Yes, Judge.

11 THE COURT: Have you read the indictment?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: To recapitulate the charges, that
14 on or about the 1st day of September, 1972, up until
15 November of 1973, both dates being approximate, here
16 and elsewhere, Charles Costanza, Nancy Jenkins,
17 Fernando Pardo, Deborah Juliani, Mary Westlake, Gary
18 Warren, a/k/a Michael Chunn, Michael DeSantis, Neil
19 DeSantis, Mary Ureka, the defendants and others
20 known and unknown to the Grand Jury wilfully, knowingly
21 and unlawfully did conspire together and with each
22 other to violate Sections of the Code dealing with
23 the unlawful importation, possession and sale of
24 narcotics.

25 It was a part of the conspiracy to import

1 quantities of cocaine and to distribute and possess
2 with intent to distribute in this country that
3 cocaine and conceal the conspiracy and in furtherance
4 of the conspiracy, you traveled by airplane with
5 one Vicky Thesman from Bogota, Colombia to Miami,
6 Florida in April, 1973 and various other acts were
7 done to carry out the conspiracy.

8 Tell me briefly what your participation in
9 this conspiracy was.

10 THE DEFENDANT: From what I understand, I
11 made a telephone call to this girl, Deborah.

12 THE COURT: What do you mean from what you
13 understand? Did you or did you not?

14 THE DEFENDANT: Yes, I did. I made the
15 telephone call and when the telephone conversation --
16 she introduced me to Fernando Pardo and I went
17 down to Colombia and I purchased the cocaine, came
18 back to Miami, was arrested at Miami Airport.

19 THE COURT: How much did you import at that
20 time?

21 THE DEFENDANT: One kilo, 200 grams, a little
22 over 200 grams.

23 THE COURT: Any other questions you think
24 I ought to ask at this time?

25 MR. KELLY: No, Judge.

1 THE COURT: Does the Government have anything
2 to suggest?

3 MR. HEINEMANN: No, your Honor.

4 THE COURT: Do you have any questions you
5 want to ask me, Mr. Chunn?

6 THE DEFENDANT: Yes, just one thing. My
7 involvement with those people, I was not involved
8 with those people in September, 1972. Of course,
9 it does say up to the filing of this indictment.

10 THE COURT: When were you involved?

11 THE DEFENDANT: Just as a short period before
12 I made this telephone call.

13 THE COURT: When was that, roughly?

14 THE DEFENDANT: November, '72 -- no, pardon
15 me, December, '72.

16 THE COURT: December, '72?

17 THE DEFENDANT: Yes. Then I wasn't involved
18 at all. I had met the people.

19 THE COURT: When did you come into this
20 country with cocaine?

21 THE DEFENDANT: April, 1973.

22 THE COURT: That's all during the conspiracy
23 period?

24 THE DEFENDANT: No, but what I meant to say,
25 your Honor, is that the indictment say from about

1 the first day of September, 1972 up until the
2 filing of this indictment my name was mentioned
3 along with these other people as bringing in cocaine
4 into this country.

5 THE COURT: This conspiracy extended over
6 a longer period of time. This Court has heard
7 the wire taps and has heard other information in
8 the case. Even though you joined the conspiracy
9 later, you would be responsible for the entire
10 conspiracy.

11 THE DEFENDANT: I didn't understand that.
12 That's what I meant, because I know I have an
13 indictment or a charge in Florida and I couldn't
14 actually understand, a charge in Florida and it's
15 the same as this one and the one in Los Angeles
16 and it's the same too. I don't understand the whole
17 situation.

18 THE COURT: I don't know whether those
19 charges will stand independently, but this Court
20 has received information having sentenced most of
21 the conspirators here, supporting the contention
22 that the conspiracy took place over a long period
23 of time and if you did anything in connection with
24 conspiracy, even though you joined it later,
25 you would be libel, like joining a business.

1 THE DEFENDANT: Even if you are not in the
2 business with those people, just introduced to some-
3 body, you're still involved in their business?

4 THE COURT: That's my interpretation, but
5 if you have any doubts about it, I suggest you
6 discuss it with your attorney.

7 THE DEFENDANT: That was the only misunderstand-
8 ing I had. I understand the conspiracy to be just
9 about anything, but my involvement with these people
10 was nothing, just introduced to one person through
11 the people.

12 THE COURT: But you did bring in cocaine as
13 part of the discussion?

14 THE DEFENDANT: Yes, I did.

15 THE COURT: How do you plead to the count,
16 guilty or not guilty?

17 THE DEFENDANT: I plead guilty, your Honor.

18 THE COURT: I accept your plea. We'll have
19 to get a probation report since this is a jail case.
20 You better give it to us in three weeks and we'll
21 sentence him before he leaves here.

22 He's in custody, Federal custody.

23 I see you have some scratches on your face.
24 What was that due to?

25 THE DEFENDANT: This, it's nerves.

1 THE COURT: What do you mean nerves?

2 THE DEFENDANT: Nervous.

3 THE COURT: You mean you scratched yourself?

4 THE DEFENDANT: No, I didn't have it scratched.
5 It's just nerves.

6 THE COURT: It's a blemish on your skin?

7 THE DEFENDANT: Yes.

8 THE COURT: See that he sees a doctor. He
9 seems to have some blemishes on his face, but he
10 seems to the Court, to be sufficiently capable and
11 in control of his wits so that he can capably plead
12 here.

13 Is that your impression?

14 MR. KELLY: Yes, sir.

15 THE COURT: Thank you.

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AFFIDAVIT OF MAILING

STATE OF NEW YORK
COUNTY OF KINGS
EASTERN DISTRICT OF NEW YORK } ss
LYDIA FERNANDEZ

being duly sworn,
deposes and says that he is employed in the office of the United States Attorney for the Eastern District of New York.

That on the 3rd day of February 19 75 he served ~~xxxx~~ two copies of the within Government's Appendix

by placing the same in a properly postpaid franked envelope addressed to:

William J. Gallagher, Esq.
Federal Defender Services Unit
The Legal Aid Society
509 United States Court House
Foley Square, New York, N. Y. 10007

and deponent further says that he sealed the said envelope and placed the same in the mail chute drop for mailing in the United States Court House, Washington Street, Borough of Brooklyn, County of Kings, City of New York.

Sworn to before me this

3rd day of February 19 75

Lydia Fernandez
LYDIA FERNANDEZ

Notary
[Signature]
Commission Expires March 30, 1978

